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February 25, 1955

NEW HAMPSHIRE LAWYERS
SEP 22 1998

CONCORD, N.H.

James J. Barry, Commissioner
N. H. Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Investigation and Report Under R.L., c. 132, s. 9

Dear Sir:

You have inquired by your letter of February 16, 1955, whether the investigation and report required by R.L., c. 132, s. 9, must be made by a probation officer regardless of what agency may bring the petition. This question must be answered in the affirmative.

The section requires that final disposition may not be made until after investigation and written report submitted to the court. The section does not specifically state who shall make the investigation. However, the second sentence thereof does state that the investigation shall include a physical and mental examination when ordered by the court or "deemed necessary by the probation officer making the investigation." This phrase is interpreted to show legislative intent that the investigation required shall be made by a probation officer.

This officer may be either the probation officer of the particular municipal court or a state probation officer in the event there is no local officer.

The Department when initiating the petition stands in the same position as any individual who may petition under section 3 and assumes, for the record at least, the status of an interested party. The report required by section 9 contemplates an investigation by a completely disinterested party. The Department lacks this disinterest in the sense that it is the initiating force for action and is requesting custody be awarded to it.

C O P Y

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J. Barry, Commissioner

Of course, the Department, to substantiate its position, may present all facts in its possession to the court either through the testimony of a department worker or by a written report to the court if permitted or requested.

Careful note should be made of the fact that this opinion is directed to action required before final disposition may be made of a proceeding under chapter 132.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/aml